where it develops that the title depends solely on the effect of adverse possession, under the statute of limitations, and the fact of such adverse holding rests only in parol testimony. "In the case of a judicial sale," says the court, "where questions may be reasonably raised affecting the title, the courts are more ready to relieve a purchaser than where the contract arises out of a private transaction between the parties; but even in the latter case, 'if resort must be had to parol evidence, if it depends upon questions of fact, then a purchaser should and will not be compelled to perform his contract.'" *Holly* v. *Hirsch*, 135 N. Y. 590 (32 N. E. 709); *Heller* v. *Cohen*, 154 N. Y. 299 (48 N. E. 527); *Moot* v. *Association*, 157 N. Y. 201 (52 N. E. 1).

The general subject of specific performance of contracts for the sale of real estate, where the title rests only on adverse possession, is discussed with a full review of the authorities in 33 Am. Law Review, 357.

LEGACIES—DEMONSTRATIVE AND SPECIFIC.—Testatrix devised to her daughter all of her real estate and all money belonging to her, on deposit in the daughter's name, with directions that the latter should "out of the moneys belonging to me on deposit in her name, pay to my son the sum of fifteen hundred dollars." At the date of the will, the testatrix had on deposit in her daughter's name $1,800, but at the time of her death considerably less than $1,500. On a bill filed by the son to require the daughter (who was also executrix) to pay the full amount of $1,500 to the son, *Held*, That the legacy to the son was specific and not demonstrative; and hence was adeemed *pro tanto* by withdrawal of the fund from bank by the testatrix in her lifetime. *Crawford* v. *McCarthy* (N. Y.), 54 N. E. 277.

The court holds that a mere gift of, or out of, a particular fund is not demonstrative, but specific. To constitute the legacy a demonstrative one, two elements are essential: (1) A bequest in the nature of a general legacy; and (2) It must point to a fund out of which the payment is to be made. In this case the first of these elements was lacking. The gift was not of "$1,500, to be paid out of the fund in bank," but of "$1,500 out of the deposit." If the gift had been "all moneys on deposit," or "half of the funds on deposit," this would clearly have been specific. So a specified amount of the funds on deposit is likewise specific. The case is a close one, but the decision appears to be sound.

NEGOTIABLE PAPER—PREMATURE ACTION.—In *Humphreys* v. *Sutcliffe*, 43 Atl. 954, the Supreme Court of Pennsylvania discusses the unsettled question whether an action may be brought against the maker of a promissory note on the day of its maturity, after presentment, demand and protest.

The court concludes that the weight of authority is in favor of the maintenance of the action. Citing: 2 Parsons, Bills & N. 461; *Greeley* v. *Thurston*, 4 Greenl. 479.

On this subject it is said in 2 Daniel, Neg. Instr. 1208: "In case of ordinary contracts to be performed upon a certain day, they are really solvable within that day; and as the promisor has the whole of that day for their performance, suit cannot be commenced until that day has passed. But where the maker of a note, or the drawer or acceptor of a bill, makes it payable on a day certain, his contract is to pay it on demand on any part of that day, if made within reasonable hours. The protest must be made on that day, which presupposes a default already made;

and whether it be the last day of grace, or the day of maturity, when there is no grace, it is clear upon principle that as soon as payment is refused, the action may be commenced."

In other sections, the author shows that the authorities "are like Swiss troops, fighting on both sides." Secs. 1207–1210.

As to the indorser, the rule seems to be that no action can be commenced against him until the notice is duly mailed, but the holder need not wait until the notice is received. If mailed on the day of dishonor, action may be instituted against the indorser on that day, as in the case of the maker. 2 Daniel, Neg. Instr., sec. 1212.

POLICE POWER—CITY ORDINANCE REGULATING WEIGHT OF BREAD—LIBERTY OF CONTRACT.—An ordinance of the city of Buffalo forbade the sale of bread by any licensed baker in loaves of less than a prescribed weight. In a prosecution for breach of the ordinance it was *Held*, that the ordinance was invalid as an unlawful interference with the liberty of the citizen. *City of Buffalo* v. *Collins Baking Co.*, 57 N. Y. Supp. 347.

As said by the court, the police power under which the law may interfere with one's private business, is confined to protection of the life, health, comfort, and property of the citizen. Here, there was no question of the protection of any of these. Loaves weighing less were as wholesome as those of greater weight, and no question of false weight was involved. The smaller loaves were sold at a proportionately less price.

"'Liberty,'" said the court, quoting from *People* v. *Gillson*, 109 N. Y. 399 (17 N. E. 345), "in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

In *Allgeyer* v. *Louisiana*, 165 U. S. 578, the Supreme Court of the United States for the first time construed the term "liberty" in the Fourteenth Amendment, as including the liberty of contract—as meaning "not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration," but as embracing "the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

MASTER AND SERVANT—TORT IN COURSE OF EMPLOYMENT.—The tortious act of a brakeman in throwing coal at a boy on the tender of an engine, by which he knocks him off or frightens him so that he jumps off, causing him to be run over and killed by the engine, is held, in *Pierce* v. *North Carolina R. Co.* (N. C.), 44 L. R. A. 316, to render the railroad company liable.

In *C. & O. R. Co.* v. *Anderson*, 93 Va. 650, it was held, contrary to rule generally prevailing in such cases, that a railroad company is not responsible for the act of a brakeman in throwing a trespasser from the train, in the absence of proof of his authority to eject trespassers, or that the custom for its brakemen to do so was known to the company.

The general principle is that the master is responsible for all the wrongs of